IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2156 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJKUMAR NAROTTAMDAS ALIAS RAJU NAROTTAMDAS BHOJAK

Versus

UNION OF INDIA

Appearance:

MR. A.S. DAVE for MRS KAVITA J YADAV for Petitioner

MS PJ DAVAWALA for Respondent No. 1

MR.H.L.JANI A.G.P. for Respondent No. 2

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2001

ORAL JUDGEMENT

1. Heard learned Advocate Mr.A.S.Dave for Mrs. K.J. Yadav on behalf of the petitioner, learned A.G.P. Mr.

H.L. Jani for respondent no. 2,3 and 4 and learned Advocate Ms. P.J. Davawala for respondent no. 1.

2. In the present petition the petitioner has challenged the detention order dated 8th February, 2001 which has been passed by the District Magistrate Mehsana under the provision of Prevention of Black Marketing Act. On behalf of the respondent - State of Gujarat an affidavit in reply has been filed by Mr. A.S. Patel, District Magistrate, Mehsana dated 12th June, 2001 and on behalf of respondent no. 1 - Union of India an affidavit in reply has been filed through Ms. S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution dated 26th April, 2001. Both the affidavits are taken on record.

3. Learned Advocate Mr. A.S. Dave has submitted that in the present petition various contention has been raised by the petitioner in challenging the detention order but however, he submitted that one contention is enough to vitiate the order of detention. He submitted that in the ground of detention on page 23 in the middle portion, initially page 4 the detaining authority has considered the provision of Act 1955, Section 12 (AA) of the Essential Commodities Act. Mr. A.S. Dave, has submitted that it amounts to total non-application of mind on the part of the detaining authority. On considering the aspect of alternative remedy for filing prosecution under Section 12 (AA) of the Essential Commodities Act, 1955, he also submitted that Section 12 (AA) was added in the principal Act of 1955 by the amendment act of 1981 which was continued from time to time till the year 1997 and thereafter, the same has not been continued. Therefore, as on date there is no provision like Section 12 (AA) in the act of 1955. Therefore, considering all such Sections, while passing the order of detention it amounts to total non-application of mind on the part of detaining authority and therefore he submitted that on this ground alone the detention order is required to be seen.

4. Learned A.G.P., Mr. H.L. Jani, appearing on behalf of the respondent - State has submitted that this aspect has been considered by the District Magistrate, Mehsana. He submitted the reply before this Court against the averments made in paragraph 12 of the petition. According to paragraph 11 of the reply the District Magistrate, Mehsana has submitted that, while passing the order of detention the detaining authority has also thought all the alternative remedies, but they

were not found enough to put immediate full stop to the detenus prejudicial activities. District Magistrate, Mehsana has also submitted that petitioner does not hold any licence issued under Essential Commodities Act and therefore steps like cancellation of the licences or suspension cannot be taken against him. Moreover, if any proceedings under Section 12 (AA) of the Essential Commodities Act, 1955 is contemplated against the detenu he may get enlarged on bail very soon and may continue with such prejudicial activities. He also submitted that since proceedings under Section 107 and 110 of the Criminal Procedure Code is not applicable in the facts and circumstances of the case, such measures were not resorted by the detaining authority.

5. In light of averments made in paragraph 11 of the reply learned Advocate Mr.H.L.Jani appearing on behalf of the respondent - State has fairly submitted that, no doubt the relevant provision 12 (AA) has not been further extended in the statute beyond 1997 but at the time of passing the detention order the said provision 12 (AA) was not in existence. Learned A.G.P. Mr.H.L.Jani agrees to the fact that such provision cannot be considered by way of having an alternative remedy by the detaining authority. In reality, if such provision is not in existence of the statute then naturally it amounts to non-application of mind.

6. Learned Advocate Ms. P.J. Davawala appearing on behalf of the respondent no. 1 has supported the detention order and submitted that the detaining authority has passed the detention order after considering the relevant facts and materials on record and she also submits that a legal and valid order is passed by the detaining authority where no interference of this Court is required.

7. I have heard the learned Advocates appearing on behalf of the respective parties. The facts remain undisputed between the parties. In the ground of detention, the detaining authority has considered the provision of Section 12 (AA) of the Essential Commodities Act, 1955 being an alternative remedy, but in reality, it is amendment of 1981 which has not been continued beyond 1997 . Therefore, when there is no provision in existence to make the alternative remedy available to the petitioner, the same has been considered as if detaining authority having considered the alternative remedy. Then naturally it amounts to total non-application of mind by the detaining authority. Not only that relevant provision 12 (AA) has been considered by the detaining

authority in the ground of detention, but the same non-application of mind has been shown by the detaining authority while filing the affidavit in reply before this Court. In paragraph 11 of the reply the same averments has been made by the detaining authority that he has considered the relevant provision 12 (AA) of Essential Commodities Act, 1955. Therefore, in light of this undisputed facts the learned A.G.P. Mr. Jani has also not disputed this non-application of mind of the detaining authority, and therefore, this Court has no other alternative except to set-aside the order of detention passed by the detaining authority.

8. In result, the present petition is allowed. The detention order dated 8th February, 2001 passed by the detaining authority District Magistrate, Mehsana is hereby quashed and set-aside. The detenu Manoj kumar Narottamdas alias Raju Narottamdas Bhojak who is detained at District jail Bhavnagar, Class II is ordered to be set at liberty forthwith if not required in any other mater. Rule is made absolute with no orders as to costs.

(H.K. RATHOD,J.)

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